

Comments on DCRA's Proposed Vending Regulation  
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More than a decade ago, I was tasked by the Downtown DC Business Improvement District to work on street vending in DC. The vending license moratorium had been established in 1998 under the Control Board, and the Downtown BID thought (rightly) that street vending could and should be a tool to enliven and enhance public space in DC. By law, the moratorium had to be temporary, and everybody knew at the time that the rules of the day didn't allow great street vending. But nobody knew exactly what the right set of regulations should be. I was supposed to figure out a solution.

We set up an organization called the Public Space Planning & Management Corporation, with a diverse board of directors. Then, we set up a Demonstration Area in a portion of the Downtown BID, where we could test different regulatory concepts. For example, we were able to make Gabe Klein's "On-The-Fly" operation "legal" in the Demonstration Area, and Gabe's operation was certainly one catalyst for the food truck "revolution" in DC. But the PSPMC developed a whole range of ideas about proper vending regulation—very few of which (unfortunately) have found their way into DCRA's regulatory drafts. That is why I write today.

While I haven't been involved in DC vending issues in several years, I still pay attention. I know the laws, the regulations, and I know many of the people in the vending community and at the agency staff level. I am well aware of the competing interests that various stakeholders have in this process. I don't want to revisit ancient vending history, or point fingers at people or decisions that have led to this regulatory impasse. Nor do I want to do a line-by-line critique of the current regulatory proposal. Others have already done that in this forum.

The points I want to make are these:

- Food trucks are now part of the DC vending environment, and they have a megaphone because of social networking. The vending regulation needs to *fairly* incorporate food trucks into a larger vending/public space management program, which addresses sidewalk vendors, public markets, roadway vendors at the National Mall, ballpark vending, etc, as well as food trucks. Vendors *and* inline businesses need to have some certainty about when, where and how vending may be conducted in DC.
- This regulatory draft is based on a defective regulatory outline. A version of this draft didn't pass in 2008. It didn't pass in 2010. It didn't pass earlier in 2012, and it should not pass in 2013. The outline is defective, because it is based on a 2005 DCRA report (which was required under legislation sponsored by Councilmember Graham). DCRA's report was *supposed* to have been based on the "findings and recommendations of the Demonstration Program". It was not. DCRA's report simply highlighted the policy preferences of Vending Coordinator Sam Williams. ([Compare the reports here](#)).

- The proposed regulation ignores pretty much ALL of the lessons that were learned in the “Vending Demonstration Program”:
  - “Legal” vending sites are not necessarily “good” vending sites—we need to re-evaluate the map.
    - The Neighborhood Zone/Central Zone licensing system makes no sense
    - The prohibited vending streets make no sense
  - Our vending design standards do not yield good design results.
  - The system rewards “rent-seeking”—e.g. Roadway Vending at the National Mall.
  - There is no justification for a lottery system to assign vending sites, except in very narrow circumstances.
- The primary problem in vending is that the administrative structure established by Mayor Barry in 1986 needs to be changed. In 1986, Mayor Barry decided that vending was a regulatory problem. We thought vending is first a planning challenge, and then it becomes a management challenge. Licensure and enforcement (i.e. DCRA, DOH) are only two tools in a larger management challenge; making licensure and enforcement the central part of the regulation simply misses the larger questions.
  - Vending is a public space planning challenge. WHERE vendors operate matters—both for vendors (Can they make money?) and for inline businesses (Do vendors unfairly reduce inline business sales?).
    - The PSPMC thought that vending ought to be generally allowed in all commercial, industrial, university, and government zones in the District. We thought the Office of Planning should provide input and perhaps declare certain locations off-limits within that planning framework. And we thought that by opening up the available geography, vendors themselves would find profitable locations which didn’t unduly impact inline business.
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  - The PSPMC thought that DDOT, not DCRA, should be the prime agency responsible for vending, reporting directly to the Deputy Mayor for Planning & Economic Development. We thought that the Public Space Management Committee was the right venue where vending questions could be discussed in an open setting.
    - Recent practice, where questions and disputes are resolved behind closed doors in the Vending Coordinators office, has led to some unusual decisions, the most glaring being the Vending Coordinator’s interpretation of the “ice cream truck rule” (which is disavowed in this most recent regulatory draft).

In my opinion, we don’t have a workable vending regulation draft because DCRA is the wrong agency to draft it. The regulatory “solution” they have attempted to sell for the past 4 years simply consolidates power within DCRA. It also requires DDOT to make the tough choices, with no resources and no political cover. Leaving aside all the problems this draft presents to vendors, its institutional bias is a fundamental problem.

The “temporary” moratorium on licensure began in 1998, and ended in 2005. It was immediately replaced with a requirement for “site permits”—permits that do not exist until a new regulation is passed. In effect, the “temporary” moratorium has now lasted for 15 year—except for food trucks, which, under DCRA logic, are ice cream trucks.

Around 2003, the Deputy Mayor of the day, Eric Price, convened a task force which led to the establishment of the PSPMC, and real progress was made, for a while. It is time for Mayor Gray to elevate the vending question to the Deputy Mayor, and task him to resolve this issue. The Mayor should also involve the Office of Planning and the Department of Transportation in these discussions. The current regulatory draft cannot be fixed. Better to start over.

The good news is that the PSPMC actually created a revised regulatory draft years ago. While it doesn’t incorporate food trucks, they could certainly be included under the PSPMC draft. The draft needs work, but it could be a new point of departure for discussion, and I’d be happy to share it with anyone who would like to see it once I get a chance to polish it up.

Our draft couldn’t be worse than the draft that DCRA is trying to today.

Sincerely yours,

Matt Hussmann